

**N THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RALPH RAYMOND BROWN)	
)	
Plaintiff,)	
)	
v.)	02: 06-cv-0804
)	
)	
KIA MOTORS CORPORATION and)	
KIA MOTORS AMERICA, INC.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Presently before the Court is the MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE DEFENSE OF CONTRIBUTORY NEGLIGENCE filed by Plaintiff Ralph Raymond Brown (Document No. 173) and the OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE DEFENSE OF CONTRIBUTORY NEGLIGENCE filed by Defendants KIA Motors Corporation and KIA Motors America, Inc. (Document No. 208). For the following reasons, the Motion will be denied.

On November 16, 2009, Plaintiff filed the instant motion in which he seeks partial summary judgment pursuant to Federal Rule of Civil Procedure 56(a) on the defense of contributory negligence asserted by Defendants, on the "grounds that there is no evidence in the record supporting the Defendants' claim that Plaintiff was negligent or that any alleged negligence on the part of the Plaintiff was a direct and proximate cause of the subject accident."

As Defendants correctly point out, the motion *sub judice* is untimely. The Second Case Management Order, entered by the Court on May 15, 2008, required that all summary judgment motions in this case be filed by June 16, 2008. Almost a year and a half (1-1/2) after

the filing deadline, Plaintiff filed the instant motion, without seeking leave of court or otherwise explaining the belated filing of the motion.

The Court finds that the filing of the instant motion at this late date is in flagrant disregard of the Court's Second Case Management Order. Additionally, the Court is mindful that there is serious risk of prejudice to parties when one party fails to follow deadlines and files a motion for partial summary judgment one and a half (1-½) years late. The Court finds and rules that it would be extremely prejudicial to Defendants to require them to respond to this late filing, which was filed on the eve of trial and one and a half (1-½) years after the expiration of the deadline for filing motions for summary judgment.

Additionally, the Court notes that Plaintiff also failed to follow the procedures required by Local Rule 56(B)(1)-(3), inclusive. Specifically, Plaintiff did not file any of the following: (i) a Concise Statement of Material Facts, (ii) a memorandum in support; and (iii) an appendix which contains the documents referenced in the concise statement.

The totality of the circumstances leads the Court to determine that Plaintiff's Motion for Partial Summary Judgment should be denied for untimeliness.

An appropriate Order follows.

McVerry, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RALPH RAYMOND BROWN)	
)	
Plaintiff,)	
)	
v.)	02: 06-cv-0804
)	
)	
KIA MOTORS CORPORATION and)	
KIA MOTORS AMERICA, INC.,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 21st day of December, 2009, in accordance with the foregoing Memorandum Opinion, it is hereby **ORDERED, ADJUDGED AND DECREED** that the Motion for Partial Summary Judgment on the Defense of Contributory Negligence (Document No. 173) is **DENIED**.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

cc: Mark F. Conboy, Esquire
Conboy & Associates LLC
Email: conboymark@hotmail.com

J. Kendall Few, Esquire
Email: kelli@jkendallfew.com

Michael Layman Ritchie, Esquire
Ritchie Law Firm
Email: MRitchie@Ritchielawfirm.com

Roger A Ritchie, Esquire
Ritchie Law Firm, P.L.C.
Email: rritchie@ritchielawfirm.com

Christopher C. Spencer, Esquire
O'Hagan Spencer, LLC
Email: cspencer@ohaganspencer.com

Clem C. Trischler, Esquire
Pietragallo, Bosick & Gordon
Email: cct@pietragallo.com

Georgia S. Hamilton, Esquire
O'Hagan Spencer LLP
Email: ghamilton@ohaganspencer.com

Elizabeth Kinland Shoenfeld, Esquire
O'Hagan Spencer, LLC
Email: ekinland@ohaganspencer.com

Scott W. Monson, Esquire
Gordon & Rees, LLP
Email: smonson@gordonrees.com